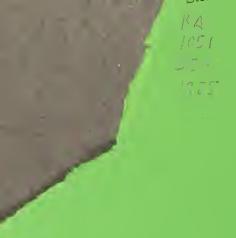


SOURCEBOOK ON

PSYCHIATRY, MENTAL HEALTH AND THE LAW

Professor B. M. Dickens
1985/86

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Variation of Trusts Act, R.S.O. 1980., c. 519	4.117

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PART I

COURSE OUTLINE

Psychiatry, Mental Health and the Law is a seminar about the rights and responsibilities of the mentally ill, the mentally retarded and those charged with caring for them. After the instructor's initial overview (in lecture format) of the subject's central themes, each student will have the opportunity to give a presentation on a relevant topic. There is plenty of room for flexibility. Guest speakers and field trips may also be arranged. Evaluation, however, will be based exclusively on a term-length paper (which will satisfy the law school's writing requirement) or on a final examination, at the student's option. Subject to Faculty Council approval, a take-home examination may also be offered.

The substance of the course will comprise as many as possible of the following issues:

I. MENTAL HEALTH AND THE CIVIL LAW

A. CIVIL CAPACITY

- 1. Common Law Criteria and Consequences
 - a. civil capacity and civil procedure
 - b. capacity to contract
 - c. capacity to incur tort liability
 - d. capacity to marry
 - e. testamentary capacity and other property dispositions
 - f. capacity to instruct counsel
 - g. capacity to consent to medical or institutional treatment
- Statutory Proceedings
 - a. Mental Incompetency Act
 - b. Part III of the Mental Health Act

B. GUARDIANSHIP

- 1. Personal Guardianship
 - a. general

- b. brain death and life-support systems: the role of the guardian
- c. the mentally retarded
 - i. general
 - ii. retardation and sterilization
- 2. Property Guardianship
 - a. powers of attorney
 - b. Mental Health Act
 - c. Mental Incompetency Act

C. CIVIL DETENTION

- 1. Criteria and Procedures: Part II of the <u>Mental</u> Health Act
- 2. The Right to Treatment While Institutionalized
- 3. Restraint and Treatment Without Consent: the Right to Refuse Treatment

II. MENTAL HEALTH AND THE CRIMINAL JUSTICE SYSTEM

A. QUESTIONS OF CAPACITY

- 1. Procedural
 - a. forms of procedural capacity
 - i. capacity to instruct counsel
 - ii. fitness to plead and stand trial
 - b. detecting procedural capacity: psychiatric remands
 - i. criminal offences
 - ii. provincial offences
- 2. Substantive: The Capacity to Form Mens Rea
 - a. the insanity defence
 - b. automatism
 - c. diminished responsibility
 - d. public welfare offences

B. QUESTIONS OF DISPOSITION

- 1. Pre-trial Detention: Mentally Disordered Suspects
- 2. Sentencing and Treatment

- a. criminal detention and civil detention
- b. Lieutenant Governor's warrants
 - i. assignment to appropriate facilities
 - ii. arrangements for review and release
- c. dangerous offender proceedings: Part XXI of the Criminal Code
 - i. punishment
 - ii. treatment
- d. post-sentence psychiatric disorder

III. FORENSIC PSYCHIATRY AND PSYCHIATRIC EVIDENCE

A. CRIMINAL JUSTICE

- 1. Psychiatric remands
- 2. The Insanity Defence
- 3. Dangerous Offender Proceedings

B. CIVIL PROCEEDINGS

- 1. In Court
 - a. Mental Incompetency Act
 - b. section 56 of the Mental Health Act
 - c. other proceedings
- 2. Review Boards
 - a. Parts II and III of the Mental Health Act
 - b. the Criminal Code

IV. LEGAL CONTROL OF PSYCHIATRIC PRACTICE

A. THE COMMON LAW: PSYCHIATRIC MALPRACTICE

- 1. Toward the Patient
 - a. contractual liability
 - b. tort liability
 - i. the duty to inform and respect the patient's wishes
 - A) in general
 - B) in psychiatric research

- C) the therapeutic privilege of nondisclosure
- ii. negligence in therapy and treatment
- iii. wrongful commitment
 - iv. failure to restrain
 - v. breach of confidentiality

2. Toward Third Parties

- a. failure to warn of apprehended peril
- b. failure to restrain
- c. the duty to warn of impending release

B. PROFESSIONAL REGULATION AND DISCIPLINE

V. MENTAL HEALTH AND CIVIL LIBERTIES

A. THE CHARTER

- 1. The Fundamental Freedoms
- 2. The Right to Vote
- 3. Section 7
- 4. The Presumption of Innocence
- 5. Cruel and Unusual Treatment
- 6. Other Legal Rights
- 7. Equality Rights and "Mental Disability"

B. HUMAN RIGHTS LEGISLATION

- 1. The Federal Act
- 2. The Ontario Code

READINGS FOR RESEARCH

The works below have been culled almost exclusively from the English language periodical literature. There has been no effort to be exhaustive even within that literature or to evaluate the works for inclusion on criteria of merit. Students are encouraged not to overlook the abundance of useful material available in book form.

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